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Application # 09/875,553
Response to Office Action Summary

1. I. The class 119, subclass of 428 appears to be primarily for backyard bird houses. The only other patented duck nesting house, Byrns, (4,889,075) is classified as class 119, subclass 435, which subclass includes some bird feeders. Is there any merit in having Claim 1 classified in class 119, subclass 437, as for poultry? Domestic ducks, as well as turkeys and chickens are poultry and subclass 437 appears to include primarily inventions for use with poultry. It is noted that wood ducks, as indicated in the present invention, are not domestic ducks but are wild migratory waterfowl. Your advice on this matter is appreciated.
II. Claim 2 for the hollow pole is grouped with other similar inventions in class 362, subclass 31.
III. Claim 3 for the segmented pole is grouped with other similar inventions in class 135, subclass 114.
2. It is agreed that inventions 1 and 2 are related and are to be used together.
3. It is agreed that inventions 1 and 3 are related and are to be used together.
4. It is agreed that inventions 2 and 3 are not dependent on one another.
5. It is agreed the three claims describe distinct items but the wood duck house in Claim 1 must use a pole to establish height to operate as intended. The present invention includes two such options, one pole for use over water, Claim 2, and a second pole, with an additional segment, Claim 3, for use on land.
6. It is affirmed, as per our telephone conversation on May 13, 2002, that Claims 2 and 3 are withdrawn.
7. Thank you for allowing the features of Claims 2 and 3 to be included as a combination with Claim 1. I agree that Claim 2 should read:
"A cylindrical duck nesting house made of white, plastic material as claimed in claim 1 further comprising: a round hollow pole made of white plastic material: said pole including one segment: a water closet fitting secured to the top of the said pole; providing an end cap fitted to the bottom of said pole whereby said pole can be planted in a wetlands area without water seepage to the inside of the said pole chamber."
I agree that claim 3 should read:
"A cylindrical duck nesting house made of white, plastic material as claimed in claim 1 further comprising: a round, segmented pole made of white plastic material; said segmented pole including two segments on a vertical plane; a water closet fitting to the top of the top pole segment to secure to the bottom of said duck nesting house; the said top pole segment sliding inside the bottom pole segment of slightly larger diameter; stabilizing collars encircling the bottom end of the said top pole segment; an end cap fitted to the bottom of said bottom pole segment; an end cap to be used on the top of the said bottom pole segment whereby the said bottom pole segment can be permanently planted in shoreline areas and temporarily capped with said end cap at the end of the nesting season."

8. I have reviewed the examiner's list of references on form PTO-892 and agree with the examiner's research. The inclusion of other references on the original patent application was an acknowledgement of the work done by others in the field, whether their work was patented or not.

Specification

- (a) Title of the invention – same as included in original application
 - (b) Cross-reference to related applications – same as examiner's form PTO – 892
 - (c) Statement regarding federally sponsored research or development – N/A
 - (d) Incorporation by reference of material submitted on a compact disk – N/A
 - (e) Background of the invention – same as included in original application
 - (f) Brief summary of the invention – summary is attached on separate sheet
 - (g) Brief description of the several views of the drawings – same as included in original application
 - (h) Detailed description of the invention – It is agreed that the "summary" included in the original application is to be relabeled "Detailed Description of the Invention."
 - (i) Claim or claims – The corrected claims are noted in item 7 above and additionally disclosed on a separate sheet.
 - (j) Abstract of the disclosure – attached on separate sheet.
 - (k) Sequence listing – N/A
9. I agree that the "summary" section on the original application should be relabeled as "Detailed Description of the Invention." I agree that this relabeled section, now titled "Detailed Description of the Invention," should be placed after the drawing figures. As stated in item 8(h) above, a summary is attached on a separate sheet.
10. As stated in item 7 and 8(i) above, the corrected claims are attached on a separate sheet.
11. I agree that the term "consisting of" is a limiting term that is not desired in the application for the present invention. As stated in items 7, 8(i) and 10 above, the corrected claims are attached on a separate sheet.
12. The present invention is indeed novel in its approach to solving several problems that plague the movement to increase the population of wood ducks in North America. The most difficult problem has been providing predator proof nesting places for wood ducks to lay and incubate their eggs.
- (a) The present invention was specifically designed so that there is no place on the entire canister for a predator to use for leverage to gain access to the duck nest. The construction is one, smooth round cylinder that provides no edges or indentations that predators can use for leverage. The Byrns (4,889,075) wood duck house is designed in two halves with edges all around that provide grasping places for predators. Even the hinges for opening and closing the Byrns wood duck house provide protuberances for predators to grasp, on both sides of that nesting house, to help the predator climb and attain access to the eggs in the nest. The smooth round sleek surface of the present invention completely eliminates that problem. The present invention was specifically designed with no edges, ridges or other uneven outside surfaces for predators to grasp.
 - (b) The present invention was specifically designed so that it cannot be attached to a tree as is the Byrns wood duck house. Numerous studies in the field have repeatedly

found that wood duck houses attached to trees have lower numbers of ducklings produced due to the easy access by squirrels, raccoons and other predators that eat duck eggs.

- (c) The present invention is used with a wetland pole or a shoreline pole. This pole has a diameter that is noticeably wider than the previous art. Because the pole is so much wider, it makes it all the more difficult for a squirrel or a raccoon to climb the pole. The wider diameter of the pole requires the grasping limbs of the squirrel or raccoon to be stretched farther apart, making the climb up the pole more difficult and even impossible. Observation and video taping of grey squirrels by Roger Strand, the highly respected wood duck authority, has shown that the squirrel cannot climb this pole. Observation and video taping by Roger Strand, of two raccoons working together, one climbing on the shoulders of the other, has shown that the raccoons still cannot climb this pole. In fact, the prior art with a predator guard plate on a pole, such as that found in Freed (5,355,835), would have provided additional leverage and additional height for the two raccoons.
- (d) The wetland pole was specifically designed as a hollow pole with a sealed bottom that would not allow water seepage into the inside chamber of the pole. Wood duck populations are found in many climates. Some of those climates have temperatures in which water in a pond freezes over in the winter. If water were to seep into the chamber and freeze, it would expand and break the plastic pole. The wetland pole used with the present invention was designed so as to eliminate that problem by having a completely sealed pole chamber. In addition, the use of plastic material increases the life of the pole over wood or metal posts, as wood and metal quickly deteriorate in water and ice. Having the use of a pole that is adapted for a wetland area deters predators from coming into the water in search of duck eggs in a nesting house. For shoreline use, the same pole is used with an adaptation for use in the ground. It is recommended that a hole be dug in the ground within 100 feet of a pond and about 15 feet away from any trees. The second segment, a cup like holder cylinder, is planted in the hole in the ground and acts to stabilize the wetland pole for use in a shoreline area. The wetland pole or top segment fits inside the second segment cylinder, of slightly wider diameter. This second segment cylinder provides inside stabilizer rings and would extend only a short height above ground level. At the end of the nesting season, the nesting house and pole can be removed from the shoreline area and the second segment cylinder is capped with an end cap at the ground level.
13. Wood ducks are migratory waterfowl, a swimming bird with webbed feet, as distinguished from purple martins, swallows and wrens that are not swimming birds. The distinctions extend to their habitat, environmental requirements, nesting requirements and eating habits.
- (a) Purple martins prefer to live in a colony or apartment type birdhouse with other purple martins, such as the colony birdhouse described in Bennett (5,740,762). In contrast, wood ducks prefer to nest alone without other ducks nearby. Studies and observations have shown that wood duck nesting houses should be at least 50 feet apart to prevent strife between the ducks and thereby increase the number of duck eggs hatched.

*distinguishable
over Bennett*

- (b) The wood duck nesting requirements are distinguished from those of the purple martin. The purple martin male selects the nesting site and attracts the female to the location. The purple martin male stays with the female and protects her through the egg laying and egg incubation period. Then the male purple martin helps the female to feed and raise the new baby birds. The process from the time of initial nest building to the time the baby birds learn to fly to leave the nest is about two and a half months. The male purple martin will guard an adjacent nest for the two parents to live in as the baby birds grow in size and the initial nest site gets too crowded. In contrast, the female wood duck selects her own nesting site, incubates the eggs in isolation for about 32 days, then leaves the nesting house to rear her ducklings on the water, never returning to use the nesting house.
- (c) The purple martin lays eggs in a single layer on the same horizontal plane and will abandon the nest if another bird, other than her mate, enters the nest. The nest is generally on the same horizontal plane as is the ingress hole. In contrast, it is not unusual for the wood duck nest to be used by a second wood duck or another migratory waterfowl, such as the hooded merganser. The female nesting wood duck leaves the nest for about an hour each day to feed and exercise. During this time away from the nest a second wood duck can claim the nest and take up residence in it to lay her own eggs on top of the eggs already there. The second wood duck will incubate all of the eggs, even those from a different species. This phenomenon increases the chance for a very large number of eggs in the same nest. The wood duck nesting house is required to be deep as the eggs are laid in layers and the wood duck uses her webbed feet and her bill to move the eggs from bottom layer to top layer as needed for incubation. The wood duck nesting house ingress hole of the present invention is high above the nesting area to allow for the layering of eggs and protection of eggs as the wood duck does not have a mate nearby for protection.
- (d) The care and feeding of baby wood ducks is distinguished from those of the purple martin. Upon hatching from the egg, the new purple martin birds are covered with fuzz and stay in the nest until they grow feathers and are able to fly. During this period the parents bring insects and bugs to the nest to feed the babies. This necessitates a perch or a ledge to stand on for the parents to lean into the nest area and put food in the mouths of the babies. After the new baby purple martins grow feathers, they will use the birdhouse perch and any ledge to test their wings and learn how to fly from the height of the birdhouse. In contrast, wood ducklings escape from their eggshell and leave the nest within one day of their hatching from the egg. The ducklings never return to the nesting house. The female wood duck calls from the pond to the ducklings and the ducklings jump from the nesting house and follow the mother's sound to the water where they find food and shelter in the water. The baby ducks are also born covered with fuzz and cannot fly until they grow feathers. There is no need for a perch or ledge on a wood duck nesting house as the ducks do not find food there. The wood ducks find their food on the water and learn to fly from the ground position. The habitat for the wood duck is the wetlands where they find food and shelter. This is in contrast to the purple martin that feeds on flying insects while in flight.

- (e) The adult wood duck weighs about one and one quarter pound and has a wing span of about 16 inches. As the wood duck is in flight towards the ingress hole of the nesting house, she tucks her wings into her side and glides right through the ingress hole to alight inside the nest. A perch or a ledge, such as on the Bennett birdhouse, would interfere with the natural flight of the wood duck. The purple martin weighs about 7 ounces with an 8 inch wing span. The ingress hole for a purple martin nest should be about 2 ¼ inches while the wood duck requires an elliptical shape of 3 inches by 4 inches.
 - (f) The mesh grid identified in the Green (6,354,244) garden accessory would require a very fine gauge, or space between the wires, as its purpose is to keep bird seed from falling to the ground and the seed sprouting as unwanted weeds in someone's backyard. The openings between the wire parts would be extremely small as to not allow seed to fall through but to allow for water to penetrate the grid. The mesh grid in the present invention is distinguished from the Green mesh grid and can be described as a nylon rope ladder with a large gauge or space between the rungs of the ladder. One day old wood ducklings use their bills to grab onto the ladder and their webbed feet to climb up from the bottom of the nesting house to reach the egress hole. There is room enough in each opening of the mesh grid climbing ladder for the duckling to grasp the ladder with its bill and place its webbed feet in the openings of the ladder to pull itself upwards towards the egress hole. A fine gauge mesh grid, as in the Green garden accessory, would condemn the wood ducklings to death inside the nesting house as they would have nothing to grasp to pull themselves up the sides of a vertical wall. In the wild, wood ducks have used hollowed out tree trunks as a nesting place. The inside of a hollowed out tree is not smooth and the ducklings have been able to use the rough surface to climb up to the opening. Since the inside of the present invention is smooth, a nylon rope ladder, or mesh grid, is provided for the ducklings to climb and escape the nest.
 - (g) The male purple martin prefers a white or light colored nesting site as he uses that background color contrast, from his own dark feather coloring, to stand out and attract a female to the nest he has chosen. By distinction, the wood duck is color blind and the mating of wood ducks is done on the water. The present invention is made of white plastic to ensure proper temperature control for the developing wood duck eggs. A dark color wood duck nesting house would absorb the heat from sunlight and greatly increase the temperature inside the nesting house such that the higher temperature would cook the eggs before full egg development.
- 14) The present invention is distinguished from the prior art as it has been specifically designed to deter the predators of wood ducks.
- (a) The present invention is distinguished from the Isenberg (3,177,849) birdhouse as the present invention solves problems related to predators of wood ducks. The Isenberg birdhouse, like the Byrns wood duck nesting house, comes in two halves with edges all around. The edges provide grasping places for predators. The present invention has a smooth, sleek round surface with no edges for predators to grasp and solves the problems associated with the prior art.
 - (b) The present invention is distinguished from the Bailey (4,765,277) telescoping pole by the pole of the present invention having sufficient diameter to deter

predators. The present invention includes a single pole that can be used in a wetland area or adapted for a shoreline area with an additional segment. The increased diameter width of the pole in the present invention makes it extremely difficult for predators to grasp onto the pole and climb. The locking mechanism and the horizontal plane rodent guard of the Bailey pole provide leverage for raccoons to use to climb higher on the pole. The wide diameter of the pole of the present invention solves the problem inherent in the Bailey pole without making additional grasping items for predators.

- (c) The present invention is distinguished from the Oh (5,134,970) bird's nest as the present invention cannot be attached to a tree. The closeness of the tree to the nest, as in the Oh bird's nest, provides an easy access for predators to climb the tree to reach the eggs in the nest. The present invention solves that problem.
- (d) The present invention is distinguished from the Freed (5,355,835) pole and platform assembly by design. The pole of the present invention is of one pole construction thereby eliminating any additional edges for a predator to grasp. The pole diameter of the present invention is markedly wider thereby making it much more difficult for predators to grasp and climb the pole. The pole of the present invention was specifically designed without a predator guard so as to eliminate any additional staging area for predators to use to gain height on the pole. The pole of the present invention can be used in a wetland area or a shoreline area. A second segment or cylinder for shoreline usage can be capped at the end of the nesting season when the nesting house and pole can be removed.
- (e) The present invention is distinguished from the Flischel (5,878,537) squirrel-proof post. The Flischel post could be appropriate for a bird feeder in which birds come and go throughout the day. However, such a device on a pole for a wood duck nesting house would be counter productive. The repeated jarring of the spring action would frighten the nesting female from her eggs and the nest could be abandoned. Since wood ducks can lay eggs in layers, the spring action of the Flischel pole may actually jar and crack eggs thus destroying the nest. The pole in the present invention is stable and deters predators from climbing to the nest.
- (f) The present invention is distinguished from the Dawson (6,244,220) pyramid cage. It appears the Dawson cage is primarily to be used to house and display small pet birds inside the pet owner's home. The wild migratory wood duck cannot use the Dawson structure to lay eggs. The wood duck requires an enclosed space in the wild. The required habitat for wood duck nesting is outdoors near a pond. The present invention provides a predator proof wood duck nesting house with a pole for use in a wetland area and or with an adaptation of a second segment cylinder, for use near a shoreline.
- (g) The present invention is distinguished from the Christian (6,311,643) bird cage. The Christian bird cage is meant to house and display small pet birds inside the home of the pet owner. The wild migratory wood duck cannot use the Christian bird cage for laying eggs. The wood duck's natural nesting habitat is a hollowed out tree trunk. The present invention provides a like kind substitute to a hollowed out tree trunk and has gone one better by making the nesting house predator proof.